

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 453

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RITA G. GETTY

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT CERTAIN CRIMINAL
OFFENDERS BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE
POSSIBILITY OF PAROLE; PROVIDING THAT PRISONERS SENTENCED TO
LIFE WITHOUT PAROLE SHALL BE CONFINED TO PRISON AND SHALL NOT BE
ELIGIBLE FOR SENTENCE SUSPENSION OR DEFERRAL OR FOR MERITORIOUS
DEDUCTION, INMATE RELEASE OR COMMUNITY RELEASE PROGRAMS;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
OF PAROLE--PRISON CONFINEMENT.--An inmate of an institution who
is sentenced to life imprisonment without the possibility of
parole shall never be eligible for a sentence suspension or

Underscored material = new
[bracketed material] = delete

1 deferral or to leave the physical confines of a prison pursuant
2 to any program, including an inmate release, community release
3 or work release program, that may be available to other prison
4 inmates."

5 Section 2. Section 31-18-23 NMSA 1978 (being Laws 1994,
6 Chapter 24, Section 2, as amended) is amended to read:

7 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
8 LIFE IMPRISONMENT--EXCEPTION. --

9 A. When a defendant is convicted of a third violent
10 felony, and each violent felony conviction is part of a separate
11 transaction or occurrence, and at least the third violent felony
12 conviction is in New Mexico, the defendant shall, [~~in addition~~
13 ~~to the sentence imposed for the third violent conviction when~~
14 ~~that sentence does not result in death~~] when the sentence
15 imposed for the third violent conviction does not result in
16 death, be punished by a sentence of life imprisonment [~~The life~~
17 ~~imprisonment sentence shall be subject to parole pursuant to the~~
18 ~~provisions of Section 31-21-10 NMSA 1978~~] without the
19 possibility of parole.

20 B. The sentence of life imprisonment shall be
21 imposed after a sentencing hearing, separate from the trial or
22 guilty plea proceeding resulting in the third violent felony
23 conviction, pursuant to the provisions of Section 31-18-24 NMSA
24 1978.

25 C. For the purpose of this section, a violent felony

Underscored material = new
[bracketed material] = delete

1 conviction incurred by a defendant before he reaches the age of
2 eighteen shall not count as a violent felony conviction.

3 D. When a defendant has a felony conviction from
4 another state, the felony conviction shall be considered a
5 violent felony for the purposes of the Criminal Sentencing Act
6 if that crime would be considered a violent felony in New
7 Mexico.

8 E. As used in the Criminal Sentencing Act:

9 (1) "great bodily harm" means an injury to the
10 person that creates a high probability of death or that causes
11 serious disfigurement or that results in permanent loss or
12 impairment of the function of any member or organ of the body;
13 and

14 (2) "violent felony" means:

15 (a) murder in the first or second degree,
16 as provided in Section 30-2-1 NMSA 1978;

17 (b) shooting at or from a motor vehicle
18 resulting in great bodily harm, as provided in Subsection B of
19 Section 30-3-8 NMSA 1978;

20 (c) kidnapping resulting in great bodily
21 harm inflicted upon the victim by his captor, as provided in
22 Subsection B of Section 30-4-1 NMSA 1978; [and]

23 (d) criminal sexual penetration, as
24 provided in Subsection C or Paragraph (5) or (6) of Subsection D
25 of Section 30-9-11 NMSA 1978; and

Underscored material = new
[bracketed material] = delete

1 (e) robbery while armed with a deadly
2 weapon resulting in great bodily harm as provided in Section
3 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
4 1978. "

5 Section 3. Section 31-18-25 NMSA 1978 (being Laws 1996,
6 Chapter 79, Section 1) is amended to read:

7 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
8 MANDATORY LIFE IMPRISONMENT--EXCEPTION. --

9 A. When a defendant is convicted of a second violent
10 sexual offense, and each violent sexual offense conviction is
11 part of a separate transaction or occurrence, and at least the
12 second violent sexual offense conviction is in New Mexico, the
13 defendant shall [~~in addition to the punishment imposed for the~~
14 ~~second violent sexual offense conviction~~] be punished by a
15 sentence of life imprisonment [~~The life imprisonment sentence~~
16 ~~shall be subject to parole pursuant to the provisions of Section~~
17 ~~31-21-10 NMSA 1978~~] without the possibility of parole.

18 B. The sentence of life imprisonment shall be
19 imposed after a sentencing hearing, separate from the trial or
20 guilty plea proceeding resulting in the second violent sexual
21 offense conviction, pursuant to the provisions of Section
22 31-18-26 NMSA 1978.

23 C. For the purposes of this section, a violent
24 sexual offense conviction incurred by a defendant before he
25 reaches the age of eighteen shall not count as a violent sexual

Underscored material = new
[bracketed material] = delete

1 offense conviction.

2 D. When a defendant has a felony conviction from
3 another state, the felony conviction shall be considered a
4 violent sexual offense for the purposes of the Criminal
5 Sentencing Act if the crime would be considered a violent sexual
6 offense in New Mexico.

7 E. As used in the Criminal Sentencing Act, "violent
8 sexual offense" means criminal sexual penetration in the first
9 or second degree, as provided in Subsection C or D of Section
10 30-9-11 NMSA 1978. "

11 Section 4. Section 31-20-3 NMSA 1978 (being Laws 1963,
12 Chapter 303, Section 29-15, as amended) is amended to read:

13 "31-20-3. ORDER DEFERRING OR SUSPENDING SENTENCE--
14 DIAGNOSTIC COMMITMENT. --Upon entry of a judgment of conviction
15 of any crime not constituting a capital [or] felony, a first
16 degree felony or a felony that requires a sentence of life
17 imprisonment without the possibility of parole, any court having
18 jurisdiction, when it is satisfied that the ends of justice and
19 the best interest of the public as well as the defendant will be
20 served thereby, may either:

21 A. enter an order deferring the imposition of
22 sentence;

23 B. sentence the defendant and enter an order
24 suspending in whole or in part the execution of the sentence; or

25 C. commit the convicted person, if convicted of a

Underscored material = new
[bracketed material] = delete

1 felony and not committed for diagnostic purposes within the
2 twelve-month period immediately preceding that conviction, to
3 the [~~department of~~] corrections department for an indeterminate
4 period not to exceed sixty days for purposes of diagnosis, with
5 direction that the court be given a report when the diagnosis is
6 complete as to what disposition appears best when the interest
7 of the public and the individual are evaluated. "

8 Section 5. Section 31-20A-3 NMSA 1978 (being Laws 1979,
9 Chapter 150, Section 4) is amended to read:

10 "31-20A-3. COURT SENTENCING. -- In a jury sentencing
11 proceeding in which the jury unanimously finds beyond a
12 reasonable doubt and specifies at least one of the aggravating
13 circumstances enumerated in Section [~~6 of this act~~] 31-20A-5
14 NMSA 1978, and unanimously specifies the sentence of death
15 pursuant to Section [~~3 of this act~~] 31-20A-2 NMSA 1978, the
16 court shall sentence the defendant to death. Where a sentence
17 of death is not unanimously specified, or the jury does not make
18 the required finding, or the jury is unable to reach a unanimous
19 verdict, the court shall sentence the defendant to life
20 imprisonment without the possibility of parole. In a nonjury
21 sentencing proceeding and in cases involving a plea of guilty,
22 where no jury has been demanded, the judge shall determine and
23 impose the sentence, but he shall not impose the sentence of
24 death except upon a finding beyond a reasonable doubt and
25 specification of at least one of the aggravating circumstances

. 115284. 1

Underscored material = new
[bracketed material] = delete

1 enumerated in Section ~~[6 of this act]~~ 31-20A-5 NMSA 1978. "

2 Section 6. Section 31-21-10 NMSA 1978 (being Laws 1980,
3 Chapter 28, Section 1, as amended) is amended to read:

4 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

5 A. An inmate of an institution who was sentenced to
6 life imprisonment is not eligible for parole if he:

7 (1) was sentenced as the result of the
8 commission of a capital felony;

9 (2) [who] was convicted of three violent
10 felonies and sentenced pursuant to Sections 31-18-23 and
11 31-18-24 NMSA 1978; or

12 (3) [who] was convicted of two violent sexual
13 offenses and sentenced pursuant to Sections 31-18-25 and
14 31-18-26 NMSA 1978. ~~[becomes eligible for a parole. hearing~~
15 ~~after he has served thirty years of his sentence. Before~~
16 ~~ordering the parole of an inmate sentenced to life imprisonment,~~
17 ~~the board shall:~~

18 (1) ~~interview the inmate at the institution~~
19 ~~where he is committed;~~

20 (2) ~~consider all pertinent information~~
21 ~~concerning the inmate, including:~~

22 (a) ~~the circumstances of the offense;~~

23 (b) ~~mitigating and aggravating~~
24 ~~circumstances;~~

25 (c) ~~whether a deadly weapon was used in~~

Underscored material = new
[bracketed material] = delete

1 ~~the commission of the offense;~~

2 ~~(d) whether the inmate is a habitual~~
3 ~~offender;~~

4 ~~(e) the reports filed under Section~~
5 ~~31-21-9 NMSA 1978; and~~

6 ~~(f) the reports of such physical and~~
7 ~~mental examinations as have been made while in prison;~~

8 ~~(3) make a finding that a parole is in the best~~
9 ~~interest of society and the inmate; and~~

10 ~~(4) make a finding that the inmate is able and~~
11 ~~willing to fulfill the obligations of a law-abiding citizen.~~

12 ~~If parole is denied, the inmate sentenced to life~~
13 ~~imprisonment shall again become entitled to a parole hearing at~~
14 ~~two-year intervals. The board may, on its own motion, reopen~~
15 ~~any case in which a hearing has already been granted and parole~~
16 ~~denied.~~

17 ~~B. Unless the board finds that it is in the best~~
18 ~~interest of society and the parolee to reduce the period of~~
19 ~~parole, a person who was convicted of a capital felony shall be~~
20 ~~required to undergo a minimum period of parole of five years.~~
21 ~~During the period of parole, the person shall be under the~~
22 ~~guidance and supervision of the board.~~

23 ~~C.]~~ B. An inmate who was convicted of a first,
24 second or third degree felony and who has served the sentence of
25 imprisonment imposed by the court in a corrections facility

Underscored material = new
[bracketed material] = delete

1 designated by the corrections department shall be required to
2 undergo a two-year period of parole. An inmate who was
3 convicted of a fourth degree felony and who has served the
4 sentence of imprisonment imposed by the court in a corrections
5 facility designated by the corrections department shall be
6 required to undergo a one-year period of parole. During the
7 period of parole, the person shall be under the guidance and
8 supervision of the board.

9 [D.] C. Every person while on parole shall remain in
10 the legal custody of the institution from which he was released,
11 but shall be subject to the orders of the board. The board
12 shall furnish to each inmate as a prerequisite to his release
13 under its supervision a written statement of the conditions of
14 parole that shall be accepted and agreed to by the inmate as
15 evidenced by his signature affixed to a duplicate copy to be
16 retained in the files of the board. The board shall also
17 require as a prerequisite to release the submission and approval
18 of a parole plan. If an inmate refuses to affix his signature
19 to the written statement of the conditions of his parole or does
20 not have an approved parole plan, he shall not be released and
21 shall remain in the custody of the corrections facility in which
22 he has served his sentence, excepting parole, until such time as
23 the period of parole he was required to serve, less meritorious
24 deductions, if any, expires, at which time he shall be released
25 from that facility without parole, or until such time that he

1 evidences his acceptance and agreement to the conditions of
2 parole as required or receives approval for his parole plan or
3 both. Time served from the date that an inmate refuses to
4 accept and agree to the conditions of parole or fails to receive
5 approval for his parole plan shall reduce the period, if any, to
6 be served under parole at a later date. If the district court
7 has ordered that the inmate make restitution to a victim as
8 provided in Section 31-17-1 NMSA 1978, the board shall include
9 restitution as a condition of parole. The board shall also
10 personally apprise the inmate of the conditions of parole and
11 his duties relating thereto.

12 [E-] D. When a person on parole has performed the
13 obligations of his release for the period of parole provided in
14 this section, the board shall make a final order of discharge
15 and issue him a certificate of discharge.

16 [F-] E. Pursuant to the provisions of Section
17 31-18-15 NMSA 1978, the board shall require the inmate as a
18 condition of parole:

19 (1) to pay the actual costs of his parole
20 services to the adult probation and parole division of the
21 corrections department for deposit to the corrections department
22 intensive supervision fund not exceeding one thousand twenty
23 dollars (\$1,020) annually to be paid in monthly installments of
24 not less than fifteen dollars (\$15.00) and not more than eighty-
25 five dollars (\$85.00), subject to modification by the adult

Underscored material = new
[bracketed material] = delete

1 probation and parole division on the basis of changed financial
2 circumstances; and

3 (2) to reimburse a law enforcement agency or
4 local crime stopper program for the amount of any reward paid by
5 the agency or program for information leading to his arrest,
6 prosecution or conviction.

7 [G-] E. The provisions of this section shall apply
8 to all inmates except geriatric, permanently incapacitated and
9 terminally ill inmates eligible for the medical and geriatric
10 parole program as provided by the Parole Board Act. "

11 Section 7. Section 33-2-34 NMSA 1978 (being Laws 1978,
12 Chapter 40, Section 1, as amended) is amended to read:

13 "33-2-34. MERITORIOUS DEDUCTIONS. --

14 A. Any inmate confined in the penitentiary of New
15 Mexico or other institution or reintegration program designated
16 by the corrections department for the confinement of adult
17 criminal offenders may be awarded a meritorious deduction of
18 thirty days per month upon recommendation of the classification
19 committee and approval of the warden; provided that an inmate
20 who:

21 (1) is sentenced to life imprisonment without
22 the possibility of parole shall not be eligible for meritorious
23 deductions;

24 [~~(1)~~] (2) disobeys an order to perform labor
25 pursuant to Section 33-8-4 NMSA 1978 shall not be eligible for

Underscored material = new
[bracketed material] = delete

1 meritorious deductions;

2 [~~(2)~~] (3) is in disciplinary segregation shall
3 not be eligible for meritorious deductions;

4 [~~(3)~~] (4) is within his first sixty days of
5 receipt by the department shall not be eligible for meritorious
6 deductions; or

7 [~~(4)~~] (5) is not engaged in programs
8 recommended and approved for him by the classification committee
9 shall not be eligible for meritorious deductions. Programs
10 include but are not limited to education, work, counseling and
11 the like.

12 The corrections department may award meritorious deductions
13 to New Mexico inmates confined in federal and out-of-state
14 corrections facilities on the basis of inmate conduct reports
15 [~~which~~] that shall be furnished by those facilities on a
16 periodic basis.

17 B. An inmate whose record of conduct shows that he
18 has performed exceptionally meritorious service and whose record
19 of conduct shows that he has otherwise faithfully observed the
20 rules of the institution may be eligible for a lump sum good
21 time award, not to exceed one year per award and not to exceed a
22 total of one year for all lump sum good time awards awarded in
23 any consecutive twelve-month period, which may be deducted from
24 the length of the sentence then remaining unserved.

25 Exceptionally meritorious service shall include heroic acts of

Underscored material = new
[bracketed material] = delete

1 saving life or property, but shall not include acts in
2 performance of normal work duties or program assignments. The
3 classification committee and the warden may recommend the number
4 of days to be awarded in each case based upon the particular
5 merits, but any award shall be determined by the director of
6 adult institutions. Allowance for exceptionally meritorious
7 service shall be in addition to the meritorious deduction
8 provided for in Subsection A of this section, and in the event
9 two or more consecutive sentences are being served, the
10 aggregate of the several sentences shall be the basis upon which
11 the deduction shall be computed.

12 C. The meritorious deductions provided for in
13 Subsections A and B of this section shall pertain to both the
14 basic sentence to be served and any enhanced term of
15 imprisonment pursuant to the provisions of the Criminal
16 Sentencing Act. For inmates convicted of crimes committed on or
17 after the effective date of this 1988 act, meritorious
18 deductions of up to ninety days per occurrence shall be
19 permanently forfeited upon recommendation of the classification
20 committee and approval of the warden if the inmate does not
21 properly maintain the standard upon which the award was based.
22 For those inmates, permanent forfeitures in excess of ninety
23 days may be made upon approval of the director of adult
24 institutions. For inmates convicted of crimes committed prior
25 to the effective date of this 1988 act, meritorious deductions

. 115284. 1

Underscored material = new
[bracketed material] = delete

1 may be terminated upon recommendation of the classification
2 committee and approval of the warden if the inmate does not
3 properly maintain the standard upon which the award was based;
4 provided that no inmate shall forfeit more than fifty percent of
5 his meritorious deductions accrued during the previous twelve
6 months; and further provided that after forfeiture of any
7 portion of an inmate's accrued meritorious deductions, the
8 remainder shall vest and shall not be subject to further
9 forfeiture.

10 D. The corrections department shall promulgate rules
11 and regulations for the implementation and determination of
12 meritorious deductions pursuant to this section, and the rules
13 or regulations shall be matters of public record. A concise
14 summary of the rules and regulations shall be provided to every
15 inmate, and every inmate shall receive a quarterly statement of
16 his accrued meritorious deductions. "

17 Section 8. Section 33-2-44 NMSA 1978 (being Laws 1969,
18 Chapter 166, Section 2, as amended) is amended to read:

19 "33-2-44. INMATE-RELEASE PROGRAM - STANDARDS FOR
20 PARTICIPATION. -- The [~~superintendent~~] warden may, under the
21 inmate-release program and at the request of a prisoner, extend
22 the limits of confinement beyond the penitentiary of New Mexico
23 by authorizing the prisoner to work at paid employment in
24 private business or in public employment or to attend a school
25 while continuing as a prisoner, if the prisoner:

. 115284. 1

Underscored material = new
[bracketed material] = delete

- 1 A. is a trusty or a ~~minimum-custody~~ inmate;
- 2 B. has physical and mental ability to fully perform
- 3 the proposed assignment consistent with his capacities and free
- 4 from any out-patient care that would interfere with full
- 5 performance;
- 6 C. is not afflicted with any serious emotional or
- 7 personality defect;
- 8 D. has not been sentenced to life imprisonment
- 9 without the possibility of parole, convicted of a crime
- 10 involving assaultive sexual conduct [~~nor~~] or violence to a
- 11 child, nor has been linked with organized criminal activity; and
- 12 E. would not, in the opinion of the [~~superintendent~~]
- 13 warden, be likely to evoke an adverse public reaction by his
- 14 presence in the community. "

15 Section 9. Section 33-9-7 NMSA 1978 (being Laws 1983,

16 Chapter 202, Section 7, as amended) is amended to read:

17 "33-9-7. STATE SELECTION PANEL. --

18 A. The department shall establish a state panel

19 whose duties shall be to immediately screen and identify

20 criminal offenders sentenced to imprisonment in a correctional

21 facility of the department, except individuals sentenced or

22 transferred from a judicial district [~~which~~] that has

23 established a local panel to exercise these duties pursuant to

24 the provisions of Section 33-9-8 NMSA 1978, who meet the

25 following criteria:

. 115284. 1

Underscored material = new
[bracketed material] = delete

1 (1) the offender has not been sentenced to life
2 imprisonment without the possibility of parole;

3 [~~(1)~~] (2) the crime involved is one for which
4 community service or reasonable restitution may be made using a
5 payment schedule compatible with the total amount of restitution
6 to be paid and the time the offender is to participate in a
7 program; and

8 [~~(2)~~] (3) the offender is willing to enter into
9 a contract [~~which~~] that establishes objectives [~~which~~] that
10 shall be achieved before release from the program

11 B. The department may establish criteria in addition
12 to those established in Subsection A of this section for the
13 screening of criminal offenders who would benefit from
14 participation in a program and who would not pose a threat to
15 the community.

16 C. If the state panel determines that a criminal
17 offender is suitable for placement in a program, a
18 recommendation to that effect and for modification of sentence
19 shall be presented as soon as possible to the sentencing judge
20 who may, notwithstanding any provision of law, accept, modify or
21 reject the recommendation. The sentencing judge's determination
22 shall be presented to the county, municipality or private
23 nonprofit organization, as applicable, for approval or
24 rejection. In no event shall the sentencing judge order to be
25 placed into a program any criminal offender whom the state

Underscored material = new
~~[bracketed material] = delete~~

1 selection panel has not approved. "

2 - 17 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

. 115284. 1

- 17 -

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 14, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 453

has had it under consideration and reports same WITHOUT
RECOMMENDATION, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 453

Page 19

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: King, Luna, Rios, Sanchez, Vaughn

Absent: None

M \H0453

Underscored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 14, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred
HOUSE BILL 453
has had it under consideration and reports same WITHOUT
RECOMMENDATION, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 453

Page 21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: King, Luna, Rios, Sanchez, Vaughn

Absent: None

M \H0453

Underscored material = new
~~[bracketed material] = delete~~

State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 18, 1997

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 453

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

Underscored material = new
~~[bracketed material] = delete~~

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 16 For 1 Against

Yes: 16

No: Abeyta

Excused: None

Absent: None

M \H0453

Underscored material = new
~~[bracketed material] = delete~~